

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal No. 15-cr-20077

Hon. Bernard A. Friedman

SARONTAY DEON BANKS,

Defendant.

**AMENDED ORDER INVITING DEFENDANT TO REPLY TO
GOVERNMENT’S STATUS REPORT WITHIN THIRTY (30) DAYS**

This matter is before the Court on defendant Sarontay Deon Banks’s motion for sentence reduction and for appointment of counsel filed in December 2021. (ECF No. 305). On February 4, 2022, this Court granted the government’s motion to adjourn the briefing schedule. (ECF No. 310). Specifically, the Court stated:

Defendant seeks compassionate release based on a non-retroactive change in sentencing law, sentencing disparities between himself and his co-defendants, and his rehabilitation while in prison. (ECF No. 305, PageID.1591-96). In the instant motion, the government argues that the primary basis for defendant’s motion for compassionate release – a non-retroactive change in sentencing law – is the subject of “an intra-circuit split—which is now intractable.” (ECF No. 309, PageID.1613) (quoting *United States v. McCall*, 20 F.4th 1109 (6th Cir. 2021) (Kethledge, J., dissenting)). The government further contends that

Mr. Banks’s motion for compassionate release is premised entirely on *McCall*, and the Solicitor General has until February 2, 2022, to decide whether to petition for rehearing en banc in that case. Given the acknowledged

intra-circuit split, and given the possibility that the issue will be taken up by the Sixth Circuit en banc in the near future, it makes sense to adjourn the briefing schedule here until the deadline for an en banc petition in *McCall* has passed, or through the completion of any en banc proceedings there, whichever is later.

(*Id.*) (citation and emphasis omitted). For cause shown,

IT IS ORDERED that the government's motion is granted.

IT IS FURTHER ORDERED that the government need not respond to defendant's motion until the deadline for an en banc petition in *McCall* has passed, or through the completion of any en banc proceedings there, whichever is later. The government shall file its response brief within fourteen days of this deadline and defendant shall file his reply brief seven days thereafter.

(*Id.*, PageID.1616-17). On July 10, 2023, this Court ordered the government to provide a status report. (ECF No. 353). The government has done so and reports that the Sixth Circuit has decided *McCall en banc*, holding “that nonretroactive legal developments—like the one advanced by Mr. Banks—do not factor into the extraordinary and compelling analysis.” (ECF No. 354) (PageID.1734) (citing *United States v. McCall*, 56 F.4th 1048, 1066 (6th Cir. 2022) (*en banc*)). The government further urges that “of particular relevance here, *McCall* also explained that compassionate release cannot ‘provide an end run around habeas.’” (*Id.* at 1735) (quoting *McCall*, 56 F.4th at 1058). Accordingly, the government argues that the Court should deny Banks's pending motion for compassionate release. Banks shall

be afforded an opportunity to reply to the government's status report, if he cares to.

Accordingly,

IT IS ORDERED that within thirty (30) days from the date of this Order, defendant Banks may file a reply to the government's status update, (ECF No. 354).

SO ORDERED.

Dated: July 28, 2023
Detroit, Michigan

s/Bernard A. Friedman
Bernard A. Friedman
Senior United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first-class U.S. mail on July 28, 2023.

Sarontay Deon Banks, #50975-039
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s/Johnetta M. Curry-Williams
Case Manager